

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

RAYMONDO LYNCH,

Petitioner,

v.

J.E. THOMAS,

Respondent.

MOSMAN, J.,

No. 3:11-cv-01426-SU

OPINION AND ORDER

On September 12, 2012, Magistrate Judge Sullivan issued her Findings and Recommendation (“F&R”) [18] in the above-captioned case recommending that petitioner’s second amended petition for writ of habeas corpus [11] be dismissed as premature based upon petitioner’s failure to exhaust his administrative remedies. She also recommended that I enter a judgment dismissing this action without prejudice to petitioner’s right to refile his pleading after he has exhausted his administrative remedies. Petitioner objected [20].

DISCUSSION

The magistrate judge makes only recommendations to the court, to which any party may file written objections. The court is not bound by the recommendations of the magistrate judge, but retains responsibility for making the final determination. The court is generally required to make a de novo determination regarding those portions of the report or specified findings or

recommendation as to which an objection is made. 28 U.S.C. § 636(b)(1)(C). However, the court is not required to review, de novo or under any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the F&R to which no objections are addressed. *See Thomas v. Arn*, 474 U.S. 140, 149 (1985); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003). While the level of scrutiny under which I am required to review the F&R depends on whether or not objections have been filed, in either case, I am free to accept, reject, or modify any part of the F&R. 28 U.S.C. § 636(b)(1)(C).

Upon review, I agree with Judge Sullivan's recommendation, and I ADOPT the F&R [18] as my own opinion.

IT IS SO ORDERED.

DATED this 2nd day of November, 2012.

/s/ Michael W. Mosman
MICHAEL W. MOSMAN
United States District Judge